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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,730	06/08/2000	Dale C. Kenison	99,267	9108

26263 7590 11/12/2002

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09589730

Applicant(s)

KPNISON et al

Examiner

MTC 604

Group Art Unit

16/6

11

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/02/02.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-48 is/are pending in the application.
- Of the above claim(s) 5-9, 13-32, 41-47 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-4, 10, 11, 233-40 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-48 are subject to restriction or election requirement.

Applicant Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of Amendment of 8/2/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 19-26, 5-9, 13-18, 27-32 and 41-47 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3.

Claims 2, 3, 11, 35, 36 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are to "derivatives"; as examiner attempted to convey at rejection of record of 2/15/02, inclusive of any molecule, water, derived from the claimed compounds and thus beyond the intended scope of the invention (as examiner believes), if supported, analogs are presumed to be the intended derivatives.

Claims 1-4, 10-12, 33-40 and 48 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. No synergy is evident to examiner. Examiner questions the term "cooperates" as the intended terminology, for which the replacement "synergy" was substituted. Examiner would entertain an

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interview on this matter, if applicant desires to come in: at present, applicant has not pointed to support for the term, or activity, consisting synergy.

Claims 1, 3, 34, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Magruder et al 5731001.

The rejection of record is maintained.

Somato tropin with salt (column 3, line 41-58) provide as much synergistic effect as the instant invention does—higher than normal rate of weight gain with increased milk production. Claim 3 recites supplemental; Magruder lists somato tropin with growth factors. Amended and new claims now permit of the inclusion of unspecified growth factor's with supplemental agents, in open guise, thus, as in claim 34 each pellet having both agents.

Claims 1-4, 10, 11, 33-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Cardamon et al 5980508.

The rejection of record is maintained.

See the compounds affecting growth combinations, and derivatives thereof of the instant invention (column 5, line 24-29, 33-39, 62). Figure 9a depicts multiple pellets, meeting instant claim s, inclusive of new 34, as each pellet may have growth stimulant and supplemental agents, such agents can be seen as including antibiotics (tetracyclines) antiparasites, nutritionals—all of which would enhance growth as they are commonly used for that purpose by the animal husbandman.

Claims 1-4, 33-36, 38 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Runkel et al 5035891.

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The rejection of record is maintained.

Applicant's arguments filed 8/02/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered, and rejections re-structured and withdrawn in accord with arguments and the amendments. However, it is unclear if the amended language claiming synergy is new matter as examiner fails to find support for this terminology as for any but expected additive effects. Applicant is granted the benefit of the doubt at this point, but new matter concerns exist.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and ⁸²²⁻⁹³⁶⁷~~305-3592~~ for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy:mv
October 28, 2002


NEIL S. LEVY
PRIMARY EXAMINER